

REMARKS

The heading at page 2 of the office action mailed 31 March 2009 is styled "Notice of Non-Responsive Amendment." Applicants provide the following remarks in response to the Examiner's assertion that the reply (amendment and argument) filed on 3 December 2009 is not fully responsive to the prior Office Action. The notice states that the reply "does not present arguments pointing out the specific distinctions believed to render the claim 19 patentable over Kashima 4,955,730. See 37 CFR 1.111." It is noted that claim 19 stands rejected under Section 102 as anticipated by Kashima, and it also stands rejected under Section 103 as being obvious over Arvidsson in combination with other references.

At the outset, applicants disagree with the Examiner's conclusion. Subsection (b) of Rule 111 states that the reply must be reduced to a writing ... and must reply to every ground of objection and rejection. With respect to the rejection of claim 19 as being anticipated by Kashima, Applicants have done so by amending the claim and stating that the claim has been amended to assure distinction over the prior art. Nothing more is required under the rule. Nonetheless, in addition to amending the claim to fully distinguish over the rejections presented under both Section 102 and under Section 103, applicants also state at page 7 of the reply:

"Claim 19 has been amended to assure distinction over the prior art. The claim now requires that the two hydraulic piston arrangements are fluidically connected to one another through a 4/2-way directional control valve. This permits selective operation of the first and second piston arrangements to displace the rotor with hydraulic forces generated by the hydraulic system, or to fluidically connect the piston arrangements to limit displacement speed of the rotor. The combination as now claimed is different than anything taught or suggested by the references."

Clearly these arguments explain why claim 19 is allowable over the references (plural) which include Kashima. It is not seen how the Examiner can possibly re-interpret the above text to conclude that applicants do not argue that claim 19 is not anticipated by the Kashima reference under Section 102. When applicants argue that a claimed combination is **different than**

anything taught or suggested by the references, there can be no doubt that applicants are arguing that there is no anticipation. Further, applicants have (see above-quoted text) **expressly cited** what the claim now requires (by way of the amendment) to place the Examiner on notice of patentable distinction which renders the claim “**different than anything taught or suggested by the references.**” Having already pointed out to the Examiner that the combination of claim 19 “now requires that the two hydraulic piston arrangements are fluidically connected to one another through a 4/2-way directional control valve ...” there is nothing further that need be said to place the Examiner on notice that there is now another distinction of record by which the claim cannot be found to be anticipated.

The Applicant has also previously provided arguments related to the distinctions of amended claim 19 over the Section 103 combinations which include Arvidsson as the primary reference. Such arguments are found at the bottom of page 7 of the previous reply, and the Applicants herein assert that the secondary references do not correct the deficiencies cited in Arvidsson. In the interest of receiving substantive examination on the merits and allowance of claim 19, and in direct response to the Notice of Non-Responsive Amendment, applicants now further place the Examiner on notice with the following:

The amendments to Claim 19 as presented in the reply filed on 3 December 2008 expressly distinguish over the rejection of claim 19 under Section 102 as anticipated by Kashima. The Examiner is therefore requested to review the claims as now presented, to confirm that claim 19 is not anticipated by Kashima, to withdraw the rejection under 35 USC 102, to confirm that the combination of Arvidsson and the cited secondary references fail to support the rejections under 35 USC 103, and to allow claim 19 over all art of record.

(Please proceed to the next page.)


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Conclusion

Allowance of the application is again requested. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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